

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:**           **HOUSING OVERVIEW & SCRUTINY COMMITTEE**

**DATE:**               **TUESDAY, 24 FEBRUARY 2015**

**REPORT BY:**       **CHIEF OFFICER (COMMUNITY AND ENTERPRISE)**

**SUBJECT:**           **HOUSING ACT 2014 (WALES) - HOMELESSNESS**  
                                 **AND POWER TO DISREGARD THE TEST OF**  
                                 **INTENTIONALITY**

**1.00    PURPOSE OF REPORT**

- 1.01    This report provides a summary of the new power, which a local authority has under the Housing (Wales) Act 2014, to decide whether or not it applies the intentionality test to requests for housing assistance from homeless applicants. The report also seeks Members' support for the position that Flintshire County Council, within its duties as a local housing authority, implements with regard to disregarding the homelessness intentionality test from April 2015.

**2.00    BACKGROUND**

- 2.01    The Housing (Wales) Act 2014 is introducing the most fundamental changes to homelessness legislation since the introduction of the Housing (Homeless Persons) Act 1977. Key features of the new homelessness legislation within the Act include:
- a new duty to help anyone threatened with homelessness within the next 56 days;
  - a duty to provide help to any homeless person to help them secure a home;
  - a power rather than a duty to apply the homelessness intentionality test;
  - new powers for local authorities to discharge their homelessness duties through finding accommodation in the private rented sector.
- 2.02    The focus of this report is the power that a local housing authority will have from April 2015 to disregard the assessment of whether an applicant, approaching the authority as homeless, has been responsible for the actions that resulted in the loss of their previous accommodation, i.e., if they are deemed to be intentionally homeless.

- 2.03 The purpose of the homelessness intentionality test is threefold. Firstly, it is used as a means by which people can be discouraged from simply giving up suitable accommodation and it also underpins the reasonable societal expectation that, wherever practical, people should take responsibility for their own actions, including, not behaving in such a way which could cause them to lose their accommodation. For example, having the financial means to pay their housing costs but, without good reason, choosing to spend money in non-essential areas of their life, accruing arrears on their mortgage/rent and facing legal action by their lender/landlord.
- 2.04 Secondly, a local housing authority uses the intentionality test to determine the 'statutory duty' which it owes to a homeless applicant. For example, a housing authority will not be under a legal duty to provide an applicant, who is intentionally homeless, with secure, long term accommodation; they only have to provide such an applicant with temporary accommodation for a limited period of time.
- 2.05 Thirdly, if a homeless applicant approaches a local housing authority to which they do not have a local connection, they can, if specified conditions are met, be referred to another local authority to which they do have a local connection. However, in order for an authority to make such a referral the applicant must be in priority need and have been assessed as 'unintentionally' homeless. Therefore, if a local housing authority wants to exercise the legal right to refer a homeless applicant to another local housing authority, it must make the decision as to whether the applicant is intentionally homeless.

### **3.00 CONSIDERATIONS**

- 3.01 As a local housing authority, Flintshire County Council is, currently, under a legal duty to make a decision as to whether an individual, who has made a statutory homelessness application, is intentionally homeless. However, from April 2015, under regulation 78, of the Housing (Wales) Act, 2014, rather than be under a legal duty to do such an assessment, the Council will have the power to decide whether it applies the intentionality test for any category of homeless applicant specified by the Welsh Ministers. (The categories of applicants are attached for Members information at appendix 1.)
- 3.02 The intent of the new power to disregard the intentionality test is broadly consistent with the intent of the other changes to homeless legislation contained within the Housing (Wales) Act 2014, which aim to encourage local housing authorities to deliver person centred services that focus upon identifying solutions to a person's housing problems, rather than services focusing upon the assessment of people through legislative processes to determine the particular statutory duty that a person is entitled to receive.

- 3.03 However, the Welsh Government has recognised that disregarding the homelessness intentionality test is a significant decision for a local housing authority to take and may have financial implications, particularly if people with no local connection to Flintshire cannot be legally referred to another local authority. Therefore, while the default position within the Housing Act is that a housing authority 'shall not' apply the test of intentionality when assessing a homeless application, a local housing authority can choose to 'opt back' in to the assessment of intentionality.
- 3.04 To continue to have regard to intentionality from April 2015, a local housing authority has to follow a series of steps outlined in the Housing Act. These include, advising the Welsh Minister of the categories of applicants who will be assessed as to the cause of their homelessness and the reasons why it has chosen to have regard to intentionality for each of the categories it has specified. The local housing authority must also publish a formal notice of its decision on its website and in any other manner that the authority deems appropriate, e.g. in housing offices, contact centres, etc.
- 3.05 Flintshire's County Council recognises the positive outcomes for people in housing need that are attained from effective, person centred homeless prevention services and in recent times the authority's Housing Options Service has been viewed as a model of best practice. In November 2014, Members received a progress report on an enhanced homelessness prevention being piloted by the Housing Options Service, ahead of the new statutory duty coming in to force in April 2015 to provide reasonable steps to assist anyone at risk of homelessness in the next 56 days.
- 3.06 However, whilst the pilot is progressing positively and the outcomes will, from April 2015, assist the authority to fulfil its new statutory homelessness prevention duties as cost effectively as possible, it would be prudent for the authority to maintain the use of the homelessness intentionality test.
- 3.07 The use of the intentionality test only becomes appropriate once the authority is satisfied that it has taken all 'reasonable steps' with the applicant to help prevent their homelessness and/or help them to secure accommodation. Therefore, deciding to continue to use the intentionality test is not a reflection that Flintshire County Council is not wholly committed to preventing homelessness. It is purely a pragmatic decision that to be confident all the new statutory homelessness duties within the Housing (Wales) Act 2014 can be undertaken as cost effectively as possible, it is sensible for the authority to embrace the new duties in a phased approach.
- 3.08 The Welsh Government will allow a local housing authority to amend its notice to either add, or remove, categories of applicants twice in a rolling twelve-month period. Thus, in the autumn of 2015, the authority

could reassess its position with regard to the use of the homelessness intentionality test and, if the Housing Solutions Service is demonstrating appropriate levels of success in the delivery of the enhanced homelessness prevention service, it may then take the decision to disregard the homelessness intentionality test, perhaps beginning with certain groups, such as, young people, pregnant woman, families, etc.

- 3.09 Following conversations with colleagues within all North Wales local authorities, it is understood that they will be recommending to their respective Cabinets to 'opt in' to the use of the intentionality test with all categories of homeless applicant. Conwy and Denbighshire are proposing to follow a similar pathway to Flintshire and will review, at a later date in 2015/16, whether to disregard the homelessness intentionality test with certain groups of applicants.

#### **4.00 RECOMMENDATIONS**

- 4.01 That Members' note the report and provide their support to the proposal that, until it is confident that it is cost effectively undertaking its new homelessness prevention statutory duty, the authority should still have regard to the homelessness intentionality test and take the appropriate steps to inform the Welsh Minister of this decision.

#### **5.00 FINANCIAL IMPLICATIONS**

- 5.01 Welsh Government funding has been provided for 2015/16 to cover additional financial burdens related to the provision of the enhanced homelessness prevention service.

#### **6.00 ANTI POVERTY IMPACT**

- 6.01 Having access to quality, affordable, and suitable housing plays a critical role in supporting people to achieve better outcomes and has a particular positive impact on the life chances of children and young people.
- 6.02 The new statutory duties upon local housing authorities to prevent homelessness will result in more people to being helped to avoid the negative impacts homelessness has upon a person's health, education, employment and social well-being.

#### **7.00 ENVIRONMENTAL IMPACT**

- 7.01 None arising directly from this report.

#### **8.00 EQUALITIES IMPACT**

- 8.01 The Housing (Wales) Act 2014 contains legislation which, when fully implemented, will ensure enhanced homelessness prevention

services are accessible to all members of Flintshire's diverse communities and therefore will increased the level of help and advice that is available for those households who are only eligible for limited assistance under the current legislation.

**9.00 PERSONNEL IMPLICATIONS**

9.01 None arising directly from this report.

**10.00 CONSULTATION REQUIRED**

10.01 None arising directly from this report.

**11.00 CONSULTATION UNDERTAKEN**

11.01 None arising directly from this report.

**12.00 APPENDICES**

12.01 Appendix 1 - Categories of applicants that need not be assessed under homelessness intentionality test.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985  
BACKGROUND DOCUMENTS**

None

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